IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/03/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.966 OF 2003
AND
WPMP.NO.1199 OF 2003

G. Gopi,
S/o. Gangadar Naidu .. Petitioner

-Vs-

1. The District Collector,
Vellore District,
Vellore.

2. The Block Development Officer,
Gudiyatham Panchayat Union,
Gudiyatham. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein

For Petitioner : Mr.D. Rajagopal

For Respondent : Mr.V. Subbarayan
Special Govt. Pleader

:O R D E R

Heard the learned counsels appearing for the parties. The petitioner has filed this writ petition for quashing the order dated 16.12.200 2 in Na.Ka.No.A6/4991/02 passed by the District Collector, the first respondent, removing the petitioner from the post of Panchayat President, in purported exercise of power under Section 205(1) of the Tamil Nadu Panchayats Act.

2. The petitioner was elected as Panchayat President of Agravaram village in the year 2001. On the basis of some complaints, the respondent No.1 issued a notice dated 8.11.2002 in Na.Ka.No.A6/4991/02 calling upon the petitioner to file his reply within 15 days. The petitioner submitted his reply denying the charges levelled against him. After receipt of the reply, the Collector passed the impugned order on 16.12.2002 removing the petitioner from the office of Panchayat President. The aforesaid order has been challenged mainly on the ground that the procedure contemplated under Section 205 of the Tamil Nadu Panchayats Act has not been followed.

3. While the matter was listed for admission, learned counsel appearing for the respondents was given time to obtain instructions. After several adjournments, a counter-affidavit has been filed on 18.3.200 3. It has been indicated that the Village panchayat ward members of Agraharam had filed allegation petitions against the petitioner and a police case has been registered on the basis of the complaint lodged by the Block Development Officer. Thereafter, a notice was issued under Section 205(a) of the the Tamil Nadu Panchayats Act (hereinafter referred to as the Act) and an order dated 8.11.2002 was passed for temporary stoppage of handling of accounts by the petitioner. Reply filed by the petitioner was not acceptable as per the report received from the Block Development Officer (VP), Guidyatham vide letter No.Rc.B2/3987/2002 dated 28.11.2002. The petitioner has been removed from the post of Panchayat President as per the provisions contained in Section 205(1)(a) of the Act. It has been further indicated that a notification has been issued on 13.3.2003 to fill up the office. It has been specifically indicated that action has been taken by the Inspector (Collector) on his own motion by exercising power under section 205(1)(a) of the Act and the question of removal after convening a meeting by the Tahsildar was not necessary.

4. Section 205 of the Act, being relevant, is extracted here under :-
 205. Removal of president. - (1) The Inspector -

(a) on his own motion, or

(b) on a representation in writing signed by not less than twothirds of the sanctioned strength of the village panchayat containing a statement of charges against the president and presented in person to the Inspector by any two of the members of the village panchayat,

is satisfied that the president wilfully omits or refuses to carry out or disobeys any provision of this Act, or any rule, by-law, regulation, or lawful order made or issued under this Act or abuses any power vested in him, the Inspector shall, by notice in writing, require the president to offer within a specified date, his explanation with respect to his acts of omission or commission mentioned in the notice.
(2) If the explanation is received within the specified date and the Inspector considers that the explanation is satisfactory, he may drop further action with respect to the notice. If no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall forward to the Tahsildar of the taluk a copy of the notice referred to in sub-section (1) and the explanation of the president if received within the specified date with a proposal for the removal of the president for ascertaining the views of the village panchayat.

(3) The Tahsildar shall then convene a meeting for the consideration of the notice and the explanation, if any, and the proposal for the removal of the president, at the office of the village panchayat at the time appointed by the Tahsildar.

(4) A copy of the notice of the meeting shall be caused to be

delivered to the president and to all the members of the village panchayat by the Tahsildar at least seven days before the date of the meeting.

(5) The Tahsildar shall preside at the meeting convened under this section and no other person shall preside thereat. If, within half an hour appointed for the meeting, the Tahsildar is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members and the president by the Tahsildar under sub-section (6).

(6) If the Tahsildar is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint. The date so appointed shall be not later than thirty days from the date so appointed for the meeting under sub-section (3). Notice of not less than seven clear days shall be given to the members and the president of the time appointed for the adjourned meeting.

(7) Save as provided in sub-sections (5) and (6), a meeting convened for the purpose of considering the notice and the explanation, if any, and the proposal for the removal of the president under this section shall not for any reason, be adjourned.

(8) As soon as the meeting convened under this section is commenced, the Tahsildar, shall read to the village panchayat the notice of the Inspector and the explanation, if any, of the president, for the consideration of which it has been convened.

(9) The Tahsildar shall not speak on the merits of the notice or explanation nor shall he be entitled to vote at the meeting.

(10) The views of the village panchayat shall be duly recorded in the minutes of the meeting and a copy of the minutes shall fortwith on the termination of the meeting be forwarded by the Tahsildar to the Inspector.

(11) The Inspector may, after considering the views of the village panchayat in this regard, in his discretion either remove the president from office by notification with effect from a date to be specified therein or drop further action.

(12) The Government shall have power to cancel any notification issued under sub-section (11) and may, pending a decision on such cancellation, postpone the date specified in such notification.

(13) Any person in respect of whom a notification has been issued under sub-section (11) removing him from the office of president shall, unless the notification is cancelled under sub-section (12), be ineligible for election as president until the date on which notice of the next ordinary elections to the village panchayat is published in the prescribed manner, or the expiry of one year from the dat specified n such notifications as postponed by the order, if any, issued under sub-section (12)whichever is earlier.

5. A perusal of the aforesaid provisions clearly indicates the procedure to be followed. The proposal to remove the President can be initiated by the Inspector on his own motion as indicated in Section 205(1)(a) or on a representation in writing as contemplated under Section 205(1)(b). If Inspector is satisfied that the president wilfully omits or refuses to carry out or disobeys any provision of the Act, or any rule, by-law, regulation or lawful order made or issued under the Act or abuses any power vested in him, he can issue notice in writing, requiring the president to offer his explanation. Under subsection (2), if the Inspector is satisfied with the explanation, he may drop the proceedings. On the other hand if no explanation is received within the specified date or if the explanation received is not satisfactory, he shall forward to the Tahsildar of the taluk a copy of the notice referred to in sub-section (1) and the explanation of the president if received within the specified date with a proposal for the removal of the president for ascertaining the views of the village panchayat.

6. The language of Section 205 sub-section (2) makes it clear that this provision is mandatory in nature and the proposal for removal has to be sent to the concerned Tahsildar for ascertaining the views of the village panchayat. Sub-sections (3) to (9) lay down the procedure to be followed regarding convening of the meeting in consideration of the notice and the proposal for removal of the president.
Sub section (10) makes it clear that the views of the Village panchayat shall be duly recorded and a copy of the minutes shall be forwarded by the Tahsildar to the Inspector. Sub-section (11) thereafter empowers the Inspector, after considering the views of the village panchayat, to either remove the president or drop further action. Sub-section (12) empowers the Government to cancel any notification and sub-section (13) envisages that until the notification is cancelled or until expiry of one year from the date specified in the notification, the quondam president would be ineligible to contest in the election for the post of president.

7. In the present case, admittedly after receipt of the explanation from the petitioner, the procedure contemplated under Section 205(2) to 205(11) has not been followed. The Inspector has not forwarded the notice along with the explanation and proposal for removal for ascertaining the views of the village panchayat.

8. It is the contention of the learned counsel for the respondents that under Section 205(1)(a), the Inspector has authority to remove the president on his own motion and it is not necessary to follow the subsequent procedure contemplated under Section 205(2) to 205(11). Such submission of the learned counsel for the respondents is not at all tenable. Authority to remove the president flows from Section 205 (11) and the provisions contained in Section 205(1) to 205(10) only contemplate the procedure to be followed. Section 205(1)(a) by itself does not confer any power to the Inspector to remove the president. Section 205(1)(a) only empowers the Inspector to initiate the proposal of removal on his own motion. Whether the proposal is initiated on the basis of Section 205(1)(a) or 205(1)(b), the subsequent procedure contemplated under Section 205(2) to 205(10) has to be followed and then only action can be taken under Section

205(11) of the Act. In such view of the matter, the present impugned notification issued by the respondent No.1 is to be quashed.

9. During pendency of the writ petition, a subsequent notification has been issued on 13.3.2003 to fill-up the casual vacancy on account of the impugned order regarding removal of the petitioner. Since the impugned order has been quashed, the subsequent consequential notification issued during pendency of the writ petition is also bound to be quashed.

10. In the result, the writ petition is allowed and the impugned order dated 16.12.2002 and the subsequent notification dated 13.3.2003 are quashed. There is no order as to costs. Consequently, the connected WPMP.No.1199 of 2003 is closed.

Index : Yes.
Internet : Yes.
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To

1. The District Collector,
Vellore District, Vellore.

2. The Block Development Officer,
Gudiyatham Panchayat Union, Gudiyatham.

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